CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 745.

STANDARD VARNISH WORKS

vs.

STEAMSHIP "BRIS"; REDERIAKTIEBOLAGET, CLAIMANT.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED NOVEMBER 22, 1918.

(26,831)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 2, 1918.

1 United States Circuit Court of Appeals for the Second Circuit.

STANDARD VARNISH WORKS, Libelant-Appellant,

against

THE STEAMSHIP BRIS, REDERIAKTIEBOLAGET BORE, Claimant-Appellee.

This cause coming on to be heard upon the appeal taken herein by the libelant and it appearing to the Court that a writ of certiorari has been granted by the Supreme Court of the United States to review the decree entered by this Court in the case of the International Paper Company against the schooner Gracie D. Chambers and others, and it also appearing to the Court by an inspection of the transcript of the record upon the appeal in this cause that questions arise in this cause which were involved in the decision in the last mentioned cause, and that the District Judge relied upon the authority of the decision of this Court in said case of the Gracie D. Chambers in making the decision on which the decree appealed from was entered.

2 Now therefore this Court hereby certifies to the Supreme Court of the United States the following question of law concerning which it desires the instructions of the Supreme Court for the proper decision of the appeal herein, under the following facts.

On August 17th, 1917, varnish belonging to libelant was shipped by it in the port of New York for Gothenburg, Sweden, upon the steamship Bris, consigned to the Allmanna Svenska Elektriska A. B. Westeras, and the agents for said ship thereupon delivered to libelant a bill of lading, of which a copy is annexed hereto, which formed a contract between libelant and claimant in reference to said goods. Particular reference is made to Clause 6, Clause 7 and the next to last clause of the bill of lading. The libelant paid in advance the freight mentioned in said bill of lading. At the time of said shipment, shippers were required to obtain export licenses from the British Government on cargo of this class, and were also required by United States Statute to obtain export licenses from the United States Government in connection with such articles as the President should, by proclamation, designate. At the time that said shipment was made the President had designated certain articles as to which licenses must be thus procured when destined for Gothenburg, Sweden, but varnish was not included among them. At the time of ship-

3 ment, the libelant presented a license which it had procured from the British Government. On August 27th, 1917, the President made a further proclamation, effective August 30th, 1917, whereby shippers of varnish and all other cargo destined for Gothenburg, Sweden, were required to procure licenses before the same could be exported. The libelant thereupon made application for such a license, and the claimant held its vessel in port until October

8th, to see if such licenses could be procured, before beginning the discharge of the cargo. Unless shipments were accompanied by the aforesaid licenses they were not allowed by the men-of-war belonging to the Allies to proceed to destination. On or about October 8th the United States, acting through the Exports Administrative Board, refused the application for a license to transport the goods mentioned in the libel, and other cargo destined for Gothenburg, and claimant thereupon began to unload the cargo of the Bris and concluded the discharge on October 22d, 1917. The claimant continued ready and willing to carry said cargo forward if a license therefor were obtained by libelant. The libelant took redelivery of the cargo at the port of shipment and made a demand upon the claimant that the claimant should return the freight paid, which demand was refused. The question aforesaid is as follows:

4 1. Did the bill of lading contract justify the carrier, under the facts stated, in refusing to refund the prepaid freight?

Which question arising from the facts aforesaid is hereby submitted to the Supreme Court.

HENRY WADE ROGERS,
U. S. Circuit Judge.
MARTIN T. MANTON,
U. S. Circuit Judge.

5 United States Circuit Court of Appeals for the Second Circuit.

UNITED STATES OF AMERICA,
Second Judicial Circuit, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Standard Varnish Works against the Steamship Bris, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the City of New York, this 20th day of November, 1918.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

6 Supreme Court of the United States.

STANDARD VARNISH WORKS, Libelant-Appellant,

against

THE BRIS, etc., Claimant-Appellee.

It is hereby stipulated that the hereto annexed copy of the Bill of Lading referred to in the Certificate of the Circuit Court of Appeals for the Second Circuit, heretofore filed herein, be attached to said Certificate instead of the blank form of the Bill of Lading now attached thereto by inadvertence.

Dated, New York, November 26th, 1918.

JULIUS J. FRANKS,
Proctor for Appellant.

HAIGHT, SANDFORD & SMITH,
CHARLES S. HAIGHT,
Proctors for Appellee.

(Here follows bill of lading marked page 7.)

[Endorsed:] File No. 26,831. Supreme Court U. S. October Term, 1918. Term No. 745. Standard Varnish Works, Appellant, vs. Steamship Bris, etc. Stipulation to substitute attached bill of lading for bill of lading attached to certificate. Filed November 29, 1918.

Endorsed on cover: File No. 26,831. U. S. Circuit Court of Appeals, 2d Circuit. Term No. 745. Standard Varnish Works vs. Steamship "Bris," Rederiaktiebolaget, Claimant. (Certificate.) Filed November 22d, 1918. File No. 26,831.